

(65)
9-12-02
J

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

BRETT T. CULVER,

Plaintiff

v.

COMMONWEALTH OF PENNSYLVANIA,
et al.,

Defendants

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CIVIL NO. 1:CV-01-0904

(Judge Kane)

FILED
HARRISBURG

SEP 12 2002

MARY E. DANDREA, CLERK

Per J
DEPUTY CLERK

ORDER

Plaintiff, an inmate at the Mahanoy State Correctional Institution, Frackville, Pennsylvania, (SCI-Mahanoy), filed this civil rights action pursuant to 42 U.S.C. § 1983.

On April 24, 2002, defendant, Department of Corrections, filed a motion to file a motion to dismiss the Department of Corrections as a defendant, nunc pro tunc. (Doc. No. 51). By Order dated May 15, 2002, the Court granted defendant's motion and accepted the motion to dismiss and supporting brief, as filed as of May 15, 2002. Though plaintiff's brief in opposition to the motion is now long overdue, he has neither made an appropriate filing nor requested an extension of time in which to do so. Therefore, the motion to dismiss may be deemed unopposed. M.D. Pa. Local Rule 7.6.¹

1. An opposing party must file a brief in opposition to a motion within fifteen (15) days after service of the movant's brief. See M.D. Pa. Local Rule 7.6.

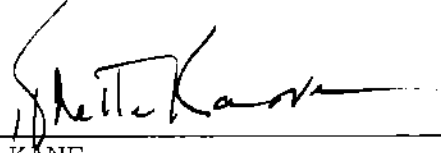
Generally, a dispositive motion may not be granted merely because it is unopposed. Because Local Rules of Court must be "construed and applied in a manner consistent with the Federal Rules of Civil Procedure," Anchorage Assoc. v. Virgin Islands Board of Tax Review, 922 F.2d 168, 174 (3d Cir. 1990), the disposition of an unopposed motion ordinarily requires a merits analysis. The Court of Appeals for the Third Circuit has stated, however, that Local Rule 7.6 can be applied to grant a motion to dismiss without analysis of the complaint's sufficiency "if a party fails to comply with the rule after a specific direction to comply from the court". Stackhouse v. Mazurkiewicz, 951 F.2d 29, 30 (3d Cir. 1991).

Because plaintiff's failure either to file a brief in opposition to defendant's motion or otherwise to communicate with the Court indicates that he may have lost interest in prosecuting this lawsuit, the Court will dismiss this case without a merits analysis under the authority of Stackhouse if plaintiff fails to oppose the motion or otherwise communicate with the Court within twenty (20) days of the date of this Order.

ACCORDINGLY, THIS 11th DAY OF Sept, 2002, IT IS
HEREBY ORDERED THAT:

Plaintiff is directed to file a brief in opposition to defendant's motion to dismiss within twenty (20) days of the date of this Order or said motion will be deemed unopposed and

granted without a merits analysis. See M.D. Pa. Local Rule 7.6;
Stackhouse v. Mazurkiewicz, 951 F.2d 29, 30 (3d Cir. 1991).

A handwritten signature in black ink, appearing to read "Yvette Kane", written over a horizontal line.

YVETTE KANE
United States District Judge

YK:dlb